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WASHINGTON REPORT
by HENRY A. WAXMAN
Congressman, 24th District

DECEMBER 3, 1975

EXECUTIVE PRIVILEGE: THE UGLY NIXON LEGACY

Though ex-President Richard M. Nixon is comfortably cloistered in his San Clemente estate, unfortunately much of his spirit lingers in Washington. In two separate instances, high level officials of the Ford Administration (both Nixon appointees), have attempted to conceal vital data from Congress by hiding behind the shield of "Executive privilege."

In both cases the cabinet officials closely followed Nixon's own example by darkly implying that Congressmen who sought information were indifferent or perhaps even hostile to the national interest.

The Congressional committees on U.S. intelligence have been attempting to find out whether our intelligence operations are keeping Congress properly informed. The House Committee chaired by Rep. Otis Pike has been especially interested in the extent to which Congress has been apprised of Soviet violations of arms limitations agreements. Naturally, Pike's Committee subpoenaed relevant State Department documents. Secretary of State Kissinger, with the tremendous arrogance of which he is capable, flatly refused to provide the papers.

Kissinger protested that he was under orders from President Ford to withhold the data. Mr. Ford's grounds? Why, of course, Executive privilege -- how did the President know that Rep. Pike's Committee would respect the sensitive nature of the documents?

Rep. Pike and his colleagues on that Committee made it clear that the Administration was suspected of not having told Congress the substantial extent to which the Soviets have violated arms agreements. Evidence was withheld both from Congress and the public not to protect the nation but to protect the narrow, partisan, short-term interests of Messrs. Ford and Kissinger. After all, it was no secret to the Russians that they were in substantial non-compliance with key arms limitations agreements!

How ludicrous the spectre of an American Secretary of State withholding data from Congress already fully known to our foreign adversaries!

more more more



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In my own House Commerce subcommittee on oversight and investigations, we have encountered precisely the same problem. I believe the Administration has been criminally lax in its enforcement of laws against the Arab boycott. Our committee has subpoenaed Commerce Department files on how those laws are being enforced. Commerce Secretary, Rogers C.B. Morton, just like Secretary of State Kissinger, has defied Congress. He has refused to honor our lawful subpoena.

Again, we are in a ridiculous predicament. Members of Congress charged with evaluating U.S. policy against the Arab boycott cannot obtain the papers central to such an evaluation. Yet, the Arab League governments against whom our policy is directed undoubtedly have the most accurate, detailed, and up-to-date records on the activities of every major U.S. company vis-a-vis both Israel and the Arab states.

Few Americans still believe that Richard Nixon invoked the doctrine of Executive privilege in the national interest. Most of us sadly recognize that he withheld tapes and documents in defiance of Congress for no reason other than to protect his own political career.

As numerous legal scholars have pointed out, in a confrontation between the Executive and Legislative branches, the custom of Executive privilege has no legal standing. It is not written into the Constitution, it does not exist in either judicial precedent or statute. I hope the contempt citations pending against both Kissinger and Morton will lead to an ultimate explosion of what one scholar calls "the myth of Executive privilege." We cannot let this musty myth continue to hamper Congress in its discharge of its Constitutionally mandated functions.

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